

Message Text

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SUMMARY: EMBOFFS HAVE HELD GENERAL REVIEW OF STATUS OF ABCC NEGOTIATION WITH FONOFF, BASED ON SCICOUNS CONSULTATIONS IN WASHINGTON ON JULY 8. PRINCIPAL REMAINING ISSUES ARE A) INITIAL CONTRIBUTIONS OF PARTIES TO NEW INSTITUTE; B) PROVISIONS FOR CONSULTATION BETWEEN PARTIES ON MANAGEMENT AND OPERATION OF INSTITUTE; AND C) REQUIREMENT FOR GAO AUDIT OF INSTITUTE. ON BASIS WASHINGTON DISCUSSIONS AND REVIEW WITH FONOFF, EMBASSY BELIEVES THESE AND OTHER ISSUES SUSCEPTIBLE TO SOLUTION THROUGH CONTINUING NEGOTIATIONS CONDUCTED, ON BASIS OF WASHINGTON POSITIONS, THROUGH EMBASSY CHANNELS, BUT FINAL NEGOTIATING SESSION WITH TEAM OF PRINCIPALS FROM US, PROBABLY IN OCTOBER, STILL VERY DESIRABLE. ACTION REQUESTED: A) TRANSMITTAL TO EMBASSY AS SOON AS POSSIBLE OF COMMENTS ON AND MARK-UP OF MOST RECENT TEXTS OF ACT OF ENDOWMENT, EXCHANGE OF NOTES, AND RECORD OF DISCUSSIONS, B) TRANSMITTAL OF PRECEDENTS AND ANY OTHER USEFUL BACKGROUND ON APPLICATION OF GAO AUDIT REQUIREMENT TO COMPARABLE INTERNATIONAL OR BILATERAL UNDERTAKINGS. END SUMMARY.

1. BASED ON GUIDANCE PROVIDED SCICOUNS IN WASHINGTON ON JULY 8,
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SCICOUNS AND POLITICAL OFFICER HELD EXTENSIVE REVIEW OF ABCC

NEGOTIATING STATUS WITH MATSUURA AND OTHER FONMIN REPS ON JULY 12, AT OUTSET, IN RESPONSE TO MATSUURA'S OBSERVATION THAT NEGOTIATIONS HAD RESULTED IN SUBSTANTIAL PROGRESS, EMBOFFS INDICATED THIS EVALUATION SHARED BY US SIDE, BUT STRESSED NEED TO REFLECT MORE CLEARLY IN LANGUAGE OF VARIOUS TEXTS UNDER NEGOTIATION THE PRINCIPLE, ON WHICH WE ARE CONFIDENT THERE IS FULL AGREEMENT, OF EQUALITY IN THE MANGEMENT AND OPERATION OF THE NEW INSTITUTE. NOTING THAT US SIDE HAD MOVED LONG WAY TO ACCOMMODATE JAPANESE FORMULATION IN RECOGNITION OF LIMITATIONS ON EXPRESS FORMULATION OF BINATIONAL CHARACTER OF NEW FOUNDATION ARISING OUT OF ITS STATUS AS JURIDICAL PERSON UNDER JAPANESE LAW; EMBOFFS STATED THAT US BELIEVES FURTHER EFFORTS TO CLARIFY PRINCIPLE OF EQUALITY IN TEXTS WOULD BE FRUITFUL. EMBOFFS THEN REVIEWED POINT-BY-POINT OUTSTANDING ISSUES IDENTIFIED IN WASHINGTON BRIEFING OF JULY 8, AS SUMMARIZED BELOW.

2. CONSULTATION - EMBOFFS OBSERVED THAT CONSEQUENCES OF INCORPORATING NEW INSTITUTE UNDER JAPANESE LAW PLACED BURDEN OF ENSURING JOINT CHARACTER OF OPERATION ON CONSULTATION MECHANISM PROVIDED FOR IN EXCHANGE OF NOTES AND RECORD OF DISCUSSIONS. ACCORDINGLY, WHILE NEW JAPANESE FORMULATION (REF A) SEEMED GENERALLY SATISFACTORY, US STILL FAVORED LANGUAGE WHICH WOULD MAKE EXPLICIT THAT CONSULTATION WOULD TAKE PLACE AT REQUEST OF EITHER PARTY. SINCE MATSUURA AGREED TO CONSIDER THIS PROPOSAL FURTHER, EMBOFFS DID NOT SUGGEST WORDING DISCUSSED IN WASHINGTON CONSULTATIONS THAT WOULD CALL FOR CONSULTATIONS "WHENEVER REQUESTED."

3. INITIAL CONTRIBUTIONS - EMBOFFS NOTED THAT JAPANESE PROPOSAL FOR US CONTRIBUTION OF BUILDINGS WITHOUT JAPANESE CONTRIBUTION OF LAND CREATED APPARENT IMBALANCE WHICH COULD COMPLICATE ABILITY OF US SIDE TO DEFEND ARRANGEMENT. IN RESPONSE MATSUURA'S QUESTION AS TO WHETHER JAPANESE WILLINGNESS (WHICH STILL UNDER CONSIDERATION BY FINANCE MINISTRY) TO COVER LAND RENT UNILATERALLY WOULD OVERCOME US CONCERN, EMBOFFS INDICATED THIS WOULD BE HELPFUL STEP, BUT STILL LEFT PROBLEM, THAT, IN ADMITTEDLY REMOTE EVENTUALITY OF DISSOLUTION OF INSTITUTE, JAPANESE WOULD HAVE TITLE TO BUILDINGS WHICH NO LONGER SERVING COMMON PURPOSE. EMBOFFS OBSERVED THAT POSSIBLE ALTERNATIVES TO OVERCOMING THIS PROBLEM WERE A) RETENTION OF TITLE TO BUILDINGS BY US, OR B) CLEAR-CUT LIMITED OFFICIAL USE

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PROVISION THAT TITLE TO BUILDINGS WOULD REVERT TO US ON DISSOLUTION OF INSTITUTE. CONFIRMING STATEMENTS HE HAS MADE IN PAST, MATSUURA EXPLAINED THAT POSSESSION OF PROPERTY WAS ESSENTIAL ATTRIBUTE OF THIS TYPE FOUNDATION UNDER JAPANESE LAW. WHILE A DIFFERENT TYPE FOUNDATION, BASED ON "PERSONS" RATHER THAN "PROPERTY" IS ALSO PROVIDED FOR UNDER JAPANESE LAW, EARLY REVIEW BY GOJ LED TO CONCLUSION THIS TYPE FOUNDATION WAS NOT SUITABLE STRUCTURE FOR NEW INSTITUTE. EMBOFFS REQUESTED, AND

MATSUURA AGREED TO SUPPLY ANALYSIS OF CHARACTERISTICS OF BOTH TYPES OF FOUNDATIONS, IN SUPPORT OF THIS CONCLUSION.

4. COMMENT: IN DISCUSSION WITH DR. ALLEN FOLLOWING CONVERSATION REPORTED HEREIN, ALLEN CONFIRMED THAT EXISTING LEASE OF LAND ON WHICH HIROSHIMA ABCC BUILDINGS LOCATED EXPIRES IN VERY FEW YEARS, AND OBLIGATES US TO RESTORE LAND TO ORIGINAL CONDITION, IF LEASE NOT EXTENDED. IN ALLEN'S VIEW, ABANDONMENT OF PRESENT SITE IS NOT MERELY REMOTE POSSIBILITY, BUT A DESIRABLE AND PROBABLE DEVELOPMENT, SINCE CURRENT LOCATION IN HIROSHIMA CITY PARK IS NOT CONVENIENT OR SUITABLE, AND MUCH MORE DESIRABLE ALTERNATIVES IN HIROSHIMA UNIVERSITY APPEAR TO BE AVAILABLE. MOREOVER, HIROSHIMA WISHES TO RESTORE LAND TO PARK USE, AND BENEFICIAL USE OF BUILDINGS BY JAPAN THEREFORE MOST UNLIKELY. ON BASIS THIS ANALYSIS, US INSISTENCE ON RETENTION OR RETURN OF TITLE TO BUILDING COULD WORK TO US FINANCIAL DISADVANTAGE, SINCE IT COULD LEAD TO APPLICATION OF REQUIREMENT TO RESTORE LAND TO ORIGINAL CONDITION ON EXPIRATION OF LEASE. EMBASSY WONDERS WHETHER MORE ADVANTAGEOUS AND MORE NEGOTIABLE APPROACH WOULD BE TO SEEK CANCELLATION OF OBLIGATION OF PRESENT LEASE TO RESTORE LAND TO ORIGINAL CONDITION, IN THE EVENT OF DISSOLUTION OF INSTITUTE, IN EXCHANGE FOR JAPANESE AGREEMENT TO PAY LAND RENT UNILATERALLY.

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5. GAO AUDIT - EMBOFFS EXPLAINED US LEGAL REQUIREMENT FOR GAO AUDIT WHENEVER US FUNDING MADE AVAILABLE. EMBOFFS NOTED THAT SINCE REQUIREMENT TIED TO FUNDING, IT COULD BE ACCOMMODATED IN

CONTACTS BETWEEN US AND NEW INSTITUTE, RATHER THAN IN BASIC INTERGOVERNMENTAL AGREEMENT. HOWEVER, THIS WOULD BE SATISFACTORY APPROACH ONLY IN EVENT THERE WAS CLEAR PRIOR UNDERSTANDING ON INCLUSION OF AUDIT PROVISION IN CONTRACTS, SINCE INABILITY TO AGREE ON THIS POINT COULD PRECLUDE US FUNDING. EMBOFFS SUGGESTED THAT NON- GOVERNMENTAL CHARACTER OF NEW INSTITUTE MIGHT FACILITATE UNDERSTANDING THAT AUDIT PROVISION ACCEPTABLE, SINCE PAST GOJ OBJECTIONS HAVE BEEN TO APPLICATION OF AUDIT PROVISION IN CONTRACTS WITH GOVERNMENTAL INSTITUTIONS. FONMIN REPS CONTINUED TO EXPRESS SERIOUS RESERVATION CONCERNING ACCEPTABILITY OF ANY AUDIT PROVISION WHICH WOULD PROVIDE EXPLICIT US GOVERNMENT ACCESS TO INSTITUTE'S RECORDS AND FACILITIES, BUT AGREED TO STUDY FURTHER WHETHER NON-GOVERNMENTAL NATURE OF INSTITUTE WOULD AFFECT THIS POSITION. THEY ALSO POINTED OUT AGAIN THAT US "SUPERVISOR" (READ AUDITOR) WOULD HAVE FULL INSPECTION RIGHTS AND COULD BE US GOVERNMENT OFFICIAL. FONMIN REPS ALSO REQUESTED PRECEDENTS AND FURTHER DETAILS ON APPLICATION OF AUDIT REQUIREMENT TO INTERNATIONAL OR INTERGOVERNMENTAL ARRANGEMENTS. THEY ALSO INQUIRED WHETHER US CONTEMPLATED CONTINUING NAS ROLE AS INTERACT WITH NEW INSTITUTE, AND, IF SO, WHETHER AUDIT REQUIREMENT COULD BE SATISFIED BY GAO ACCESS TO NAS RECORDS, WHICH, OF COURSE, WOULD EMBODY INSTITUTE RECORDS.

6. COMMENT: EMBASSY BELIEVES THAT REQUIREMENT FOR US SUPERVISION LIMITED OFFICIAL USE

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MAY PROVIDE AVENUE FOR SATISFYING AUDIT REQUIREMENT. HOWEVER, BEFORE EXPLORING THIS POSSIBILITY IN DETAIL, IT WOULD SEEM USEFUL TO CONTINUE ANALYSIS ON BOTH SIDES OF ACCOMMODATING REQUIREMENT IN MORE DIRECT MANNER THROUGH OPERATING CONTRACTS WITH INSTITUTE. EMBASSY WOULD APPRECIATE RECEIVING INFORMATION ON PRECEDENTS MENTIONED ABOVE, AS WELL AS GUIDANCE FOR RESPONSE TO JAPANESE INQUIRY ON POSSIBILITY THAT AUDIT ON NAS RECORDS COULD MEET REQUIREMENTS.

7. RETIREMENT LIABILITY - EMBOFFS SIMPLY IDENTIFIED THIS AS ITEM REQUIRING FURTHER STUDY.

8. SCIENTIFIC REVIEW - EMBOFFS INFORMED FONMIN REPS OF US CONCERN THAT SCIENTIFIC REVIEW OF CURRENT PROGRAM IS OVERDUE. MATSUURA CONFIRMED THAT UNDERTAKING OF FORMAL SCIENTIFIC REVIEW DURING PRESENT TRANSITION PERIOD, WHETHER UNILATERALLY BY US OR BILATERALLY, COULD HAVE UNFORTUNATE CONSEQUENCES ON EFFORTS TO SELL NEW ARRANGEMENT TO DIET AND LOCAL AUTHORITIES. HOWEVER, JAPANESE REPS AGREED THAT THERE IS NO OBJECTION TO CONTINUATION OF NORMAL SCIENTIFIC LIAISON FUNCTION DURING TRANSITION PERIOD, INCLUDING VISITS BY AEC SCIENTISTS FOR PROGRAM REVIEW PURPOSES.

9. UNIVERSITY RELATIONS - EMBOFFS STRESSED IMPORTANCE TO NEW INSTITUTE PROGRAM OF CLOSE WORKING RELATIONSHIPS WITH

UNIVERSITY AND OTHER OUTSIDE SCIENTISTS. FONMIN REPS COMPLETELY ACCEPT AND SUPPORT THIS POINT AND OUTLINED STEPS WHICH HAVE BEEN TAKEN (INCLUDING NEW LANGUAGE IN ARTICLE 4 (2) AND CONSULTATIONS WITH BOTH MHW AND MINISTRY OF EDUCATION), BUT FONMIN REPS DO NOT RECALL COMMITMENT, REFERRED TO IN WASHINGTON CONSULTATIONS, TO FURNISH LETTER ON THIS POINT. THEIR VIEW IS THAT ANY ATTEMPT TO FORMALIZE UNIVERSITY - INSTITUTE COOPERATION AT THIS TIME WOULD BE COUNTER PRODUCTIVE. WHILE RECOGNIZING STRONG JURISDICTIONAL CONFLICTS CHARACTERISTIC OF GOJ BUREAUCRACY, EMBASSY BELIEVES THIS IS AREA WHERE INTERESTS OF PARTIES CLEARLY COINCIDE, AND THAT DURING NEGOTIATING PROCESS WE CAN MAKE SUBSTANTIAL PROGRESS IN THIS AREA, PERHAPS CONCLUDING WITH EXCHANGE OF LETTERS AT TIME OF SIGNING AGREEMENT INDICATING READINESS OF BOTH MINISTRIES TO COOPERATE IN SUPPORT OF NEW INSTITUTE.

10. SALARY, HOUSING AND RELATED ISSUES - MATSUURA TOOK INITIATIVE IN IDENTIFYING THAT THERE ARE NUMBER OF ISSUES NOT DIRECTLY LIMITED OFFICIAL USE

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REFLECTED IN TEXTS OF CHARTER AND AGREEMENT, BUT WHICH EXTREMELY IMPORTANT TO SMOOTH INITIAL OPERATION OF INSTITUTE. HE URGED (SEE PARA 11 BELOW) THAT THESE BE COVERED IN LATER NEGOTIATING SESSION OF THE PRINCIPALS.

11. EMBOFFS NOTED THAT ACT OF ENDOWMENT DESCRIBES JAPANESE MINISTER RESPONSIBLE FOR INSTITUTE AS "MINISTER-IN-CHARGE", AND EXPRESSED VIEW THAT THIS NOT DESIRABLE FROM US PRESENTATIONAL VIEWPOINT. MATSUURA INDICATED THAT THIS WAS MATTER OF TRANSLATION AND THAT LANGUAGE SUCH AS "COMPETENT MINISTER" OR "RESPONSIBLE MINISTER" WOULD ALSO BE ACCEPTABLE. EMBASSY SUGGESTS WE EXPRESS PREFERENCE FOR "COMPETENT MINISTER."

12. FOLLOWING CONCLUSION OF DISCUSSION ON TERMS OF ESTABLISHMENT OF NEW INSTITUTE, EMBOFFS INFORMED MATSUURA THAT ABCC FINANCES PRIOR TO CREATION OF NEW INSTITUTE STILL PRECARIOUS, AND ADDITIONAL JAPANESE FINANCIAL PARTICIPATION DURING THIS PERIOD VERY LIKELY TO BE REQUIRED. MATSUURA AGREED THAT THIS ISSUE SHOULD BE TAKEN UP IN FIRST INSTANCE WITH MHW AUTHORITIES. EMBASSY UNDERSTANDS THAT NAS CURRENTLY REVIEWING FINANCIAL SITUATION AND THAT DR. ALLEN WILL BE INFORMED OF RESULTS AND INITIATE DISCUSSION OF REQUIREMENTS WITH JNIIH IN NEAR FUTURE.

13. TURNING TO PROCEDURAL ASPECTS OF NEGOTIATION, EMBOFFS INFORMED MATSUURA THAT US PREFERENCE IS TO AVOID SCHEDULING FURTHER NEGOTIATING SESSION FOR TIME BEING, AND TO SEEK TO BRING VIEWS AND TEXTS INTO CLOSER AGREEMENT BY DISCUSSIONS THROUGH REGULAR DIPLOMATIC CHANNELS. WE INDICATED THAT, TOWARD THIS END, WASHINGTON WAS DEVELOPING SPECIFIC COMMENTS AND TEXTUAL PROPOSALS WHICH WOULD BE COMMUNICATED TO FONMIN AS SOON AS RECEIVED. MATSUURA WELCOMED THIS APPROACH, BUT EXPRESSED VIEW,

WHICH EMBASSY STRONGLY SUPPORTS, THAT FINAL NEGOTIATING SESSION ATTENDED BY PRINCIPALS BE HELD EVEN IF FULL AGREEMENT REACHED THROUGH EMBASSY CHANNELS ON TEXTS. SUCH SESSION NEEDED FOR DISCUSSION OF SALARY AND OTHER "NON-AGREEMENT" ISSUES, AND ALSO IMPORTANT, IN EMBASSY VIEW, TO ENSURE COMMON UNDERSTANDING OF ALL TEXTS. MATSUURA SUGGESTED THAT SUCH MEETING SHOULD TAKE PLACE IN TOKYO AROUND OCTOBER. IN MEANTIME, EARLIEST POSSIBLE RECEIPT OF SPECIFIC WASHINGTON COMMENTS AND LANGUAGE PROPOSALS ON CURRENT VERSIONS OF ALL TEXTS MOST IMPORTANT IF SCHEDULE IS TO BE MET.

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14. EMBASSY COMMENT: EMBASSY BELIEVES THAT FIRST NEGOTIATING VISIT DID INDEED MAKE MAJOR PROGRESS AND THAT CONSTRUCTIVE APPROACH OF US NEGOTIATORS WAS APPRECIATED BY JAPANESE. WE BELIEVE REMAINING PROBLEMS ARE SUSCEPTIBLE OF REASONABLE SOLUTIONS AND THAT MOST, IF NOT ALL, CAN BE DEVELOPED THROUGH EMBASSY DISCUSSIONS WITH FONOFFS ON BASIS OF POSITIONS ESTABLISHED IN WASHINGTON. MOST COMPLEX REMAINING ISSUE APPEARS TO BE AUDIT REQUIREMENT, AND EMBASSY WOULD APPRECIATE INFORMATION ON PRECEDENTS, REFERRED TO IN PARA 5, AS WELL AS ANY OTHER BACKGROUND ON LEGAL BASIS FOR THE REQUIREMENT.

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